

REPRESENTATIVE FOR PETITIONERS:  
Milo Smith, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:  
Brian Cusimano, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Randy A. & Sara Ballinger	)	Petition Nos.: 27-020-15-1-4-00346-15
	)	27-020-16-1-4-02183-16
Petitioner,	)	
	)	Parcel No.: 27-08-29-300-011.000-020
v.	)	
	)	County: Grant
Grant County Assessor	)	
	)	Township: Monroe
Respondent.	)	
	)	Assessment Years: 2015 & 2016

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Appeal from the Final Determination of the  
Grant County Property Tax Assessment Board of Appeals

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**ISSUED:**

**April 17, 2018**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **INTRODUCTION**

1. The property under appeal is owned by Petitioners and operated by Walnut Creek Golf Course, Inc. The primary issue is the scope of the definition of a golf course found in Ind. Code § 6-1.1-4-42.

## **PROCEDURAL HISTORY**

2. The parcel consists of 301.71 acres with three single-family residences, three pole barns, two utility sheds, two 18-hole golf courses, and what the parties refer to as the “clubhouses.” The property is located at 7453 East 400 South in Marion.
3. Petitioners initiated assessment appeals on July 30, 2015, for 2015 and on June 24, 2016, for 2016, by filing Form 130 petitions with the Grant County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its Notifications of Final Assessment Determinations on December 1, 2015, and December 6, 2016, respectively. Petitioners then timely filed Form 131 petitions on December 31, 2015, and December 16, 2016.
4. On October 19, 2017, the Board’s designated administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the properties.
5. The following people testified under oath:  
  
    For Petitioners:       Randy Ballinger, owner,  
                                  Richard Brock, certified public accountant,  
                                  Milo Smith, certified tax representative,  
  
    For Respondent:       Anthony Garrison, property tax consultant,  
                                  Gary Landrum, Grant County Assessor.
6. Petitioners offered the following exhibits:

Petitioner Exhibit 1: Subject 2015 property record card (“PRC”),

- Petitioner Exhibit 2: Subject 2016 PRC,
- Petitioner Exhibit 3: 50 IAC 29-1-1 through 29-3-8, “Procedures for the Assessment of Golf Courses,”
- Petitioner Exhibit 4: Department of Local Government Finance (“DLGF”) memo “Golf Course Guidance” prepared by Barry Wood, dated March 2, 2015,
- Petitioner Exhibit 5: DLGF memo “Golf Course Guidance” prepared by Barry Wood, dated January 4, 2016,
- Petitioner Exhibit 6: CPA Spreadsheet (**Confidential**),
- Petitioner Exhibit 7: 2013 U.S. Income Tax Return for an S Corporation – Form 1120S (**Confidential**),
- Petitioner Exhibit 8: 2014 U.S. Income Tax Return for an S Corporation – Form 1120S (**Confidential**),
- Petitioner Exhibit 9: 2015 U.S. Income Tax Return for an S Corporation – Form 1120S (**Confidential**),
- Petitioner Exhibit 10: 2016 U.S. Income Tax Return for an S Corporation – Form 1120S (**Confidential**).

7. Respondent offered the following exhibits:

2015 Exhibits:

- Respondent Exhibit A: Subject 2015 PRC,
- Respondent Exhibit B: Respondent’s 2015 valuation summary,
- Respondent Exhibit C: Respondent’s 2015 golf course improvements valuation (**Confidential**),
- Respondent Exhibit D: 2012 – 2015 analysis of subject property income (**Confidential**),
- Respondent Exhibit E: 2012 – 2015 golf course income valuation (**Confidential**),
- Respondent Exhibit F: 2013 profit & loss statement for Walnut Creek (**Confidential**),
- Respondent Exhibit G: 2015 profit & loss statement for Walnut Creek (**Confidential**),
- Respondent Exhibit H: Respondent’s 2015 income approach for clubhouses,
- Respondent Exhibit I: Lease data for 209-213 East 33<sup>rd</sup> Street, 3700 South Western Avenue, and 3726-3742 South Western Avenue in Marion,
- Respondent Exhibit J: DLGF memo “Golf Course Guidance” prepared by Barry Wood, dated March 2, 2015,
- Respondent Exhibit AA: 2017 golf course fees for Shady Hills and Arbor Trace Golf Club,
- Respondent Exhibit BB: *Randy A. & Sara Ballinger v. Grant County Assessor*, Pet. Nos. 27-020-12-1-4-00001, 27-020-12-1-4-00002

and 27-020-12-1-4-00003 (Ind. Bd. Tax Rev. Oct. 27, 2014).

2016 Exhibits:

Respondent Exhibit K: Subject 2016 PRC,  
Respondent Exhibit L: Respondent's 2016 valuation summary,  
Respondent Exhibit M: Respondent's 2016 golf course improvements valuation  
**(Confidential)**,  
Respondent Exhibit N: 2012 – 2015 analysis of subject property income  
**(Confidential)**,  
Respondent Exhibit O: 2012 – 2015 golf course income valuation  
**(Confidential)**,  
Respondent Exhibit P: 2013 profit & loss statement for Walnut Creek  
**(Confidential)**,  
Respondent Exhibit Q: 2015 profit & loss statement for Walnut Creek  
**(Confidential)**,  
Respondent Exhibit R: Respondent's 2016 income approach for clubhouses,  
Respondent Exhibit S: Lease data for 209-213 East 33<sup>rd</sup> Street, 3700 South  
Western Avenue, and 3726-3742 South Western  
Avenue in Marion,  
Respondent Exhibit T: 2017 golf course fees for Shady Hills and Arbor Trace  
Golf Club,  
Respondent Exhibit U: *Randy A. & Sara Ballinger v. Grant County Assessor*,  
Pet. Nos. 27-020-12-1-4-00001, 27-020-12-1-4-00002  
and 27-020-12-1-4-00003 (Ind. Bd. Tax Rev. Sept. 27,  
2014),  
Respondent Exhibit V: DLGF memo "Golf Course Guidance" prepared by  
Barry Wood, dated January 4, 2016.

8. The following additional items are officially recognized as part of the record:

Board Exhibit A – Form 131 petitions with attachments,  
Board Exhibit B – Notices of hearing,  
Board Exhibit C – Hearing sign-in sheets.

9. The PTABOA determined the following assessed values:

Assessment Year	Land	Improvements	Total
2015	\$379,600	\$228,200	\$607,800
2016	\$379,600	\$239,000	\$618,600

10. Petitioners requested total assessed values of \$142,400 for 2015 and \$145,900 for 2016.

### **BURDEN OF PROOF**

11. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that his property’s assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
12. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
13. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township

assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

14. These provisions many not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The Board issued an order on October 13, 2016, finding the property’s assessed value for 2015 is less than the property’s assessed value for 2014, and that Petitioners have the burden of proof for 2015. Petitioners’ representative further stated at the hearing that Petitioners also have the burden of proof for 2016.

#### **SUMMARY OF PETITIONERS’ CONTENTIONS**

16. Petitioners own the subject property and use it in the operation of two golf courses. They are the sole owners of the property. They have lived in one of the residences since 1974 in order to provide security and prevent vandalism, break-ins, and theft. Another house was built for Randy Ballinger’s mother “as a direct result of a car . . . driving all over . . . the course.” *Ballinger testimony*.
17. Petitioners’ representative, Milo Smith, presented the definition of a golf course as found in Ind. Code § 6-1.1-4-42 (b) which states that a golf course means “an area of land and yard improvements that are predominately used to play the game of golf. A golf course consists of a series of holes, each consisting of a teeing area, fairway, rough and other hazards, and the green with the pin and cup.” Ind. Code § 6-1.1-4-42 (e) goes on to state that “Assessing officials shall use the tables and procedures adopted by the department of local government finance to assess, reassess, and annually adjust assessed values of golf courses.” The DLGF defines the procedures for assessing a golf course in 50 IAC 29-1-1 through 29-3-8. *Smith testimony; Pet’r Ex. 3*.

18. Mr. Smith further presented two DLGF memoranda on golf courses from March 2, 2015, and January 5, 2016. Specifically, those memoranda attempt to clarify the definition of a golf course by stating:

Most golf courses feature multiple tracts of land, a club house, maintenance building, housing for irrigation pumps and/or controls, and a driving range. The aggregate income capitalization valuation of these parcels contributes to the NOI of the course and generally cannot be separated out. The market value-in-use of the facility would therefore include all of the parcels.

Finally, the income capitalization method for golf courses includes revenue from multiple sources, including greens fees, membership fees, food and beverage sales, the driving range, etc. Consequently, the clubhouse, banquet center, driving range, maintenance building, housing for pumps and/or controls, etc., are not to be assessed separately and are included in the assessment for the golf course using the income capitalization method.

Based on these memoranda, Petitioners contend the entire complex, including the homes located on the property, should be included in the operation of the golf course.

Therefore, Petitioners contend, the entire complex should be valued using the income capitalization method. *Smith testimony; Pet'r Exs. 4 & 5.*

19. CPA Richard Brock valued the property at \$142,363.71 for 2015 and \$145,856.35 for 2016 using the guidelines set forth under the applicable statute, administrative code provisions, and DLGF memoranda. *Brock testimony; Pet'r Exs. 3-6.*

20. Brock testified that his calculation was derived by following the instructions outlined in 50 IAC 29-3-7. First, using Walnut Creek's income tax returns, he took the ordinary income for 2014 and 2015 minus the golf cart income, pro shop income, non-golf income, and "EIWIFI" income.<sup>1</sup> He noted that he did not subtract depreciation, interest, or certain charitable contributions from the allowable expenses to arrive at the negative operating incomes for 2014 and 2015. *Brock testimony; Pet'r Exs. 6, 8 & 9.*

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<sup>1</sup> "EIWIFI" income represents income from a rural WIFI provider that Ballinger owns and whose income appears on the tax return of Walnut Creek. The EIWIFI income has nothing to do with the operation of the golf courses.

21. Once he determined there was a negative operating income, he calculated the property's value using the steps outlined in 50 IAC 29-3-7. Brock determined the gross income derived from golf activities for 2014 was \$557,992. Next, he subtracted \$118,441 in golf cart income, \$44,071 in pro shop income, and \$61,210 in EIWIFI to arrive at an adjusted gross income of \$334,270. The adjusted gross income was multiplied by 5% for a value of \$16,713.50. Finally, the \$16,713.50 was divided by the DLGF determined capitalization rate of 11.74% to reach an assessed value of \$142,363.71. *Brock testimony; Pet'r Ex. 4-6.*
22. In light of these considerations, Petitioners contend the correct assessed value is \$142,400 for 2015. *Smith testimony.*
23. Brock determined the gross income for 2015 was \$544,787. He subtracted \$117,195 in golf cart income, \$24,905 in pro shop income, and \$62,550 in EIWIFI to arrive at an adjusted gross income of \$340,137. The adjusted gross income was multiplied by 5% for a value of \$17,006.85. The \$17,006.85 was divided by the DLGF determined capitalization rate of 11.66% to reach an assessed value of \$145,856.35. *Brock testimony; Pet'r Ex. 4-6.*
24. In light of these considerations, Petitioners contend the correct assessed value is \$145,900 for 2016. *Smith testimony.*
25. In response to questioning by Respondent, Brock testified his income approach calculation included some personal property as well as real estate taxes. Because he was unclear as to whether or not they were allowable expenses, he included them. He also contended that if they were removed, the property would still have a negative net operating income. *Brock testimony.*

#### **SUMMARY OF RESPONDENT'S CONTENTIONS**

26. Respondent contends that the subject property is comprised of three types of "tax cap" categories: type 1 residential, type 2 non-residential, and type 3 non-residential. Type 1

residential represents a taxpayer's homestead property. Type 2 non-residential consists of rental property, residential property, apartment complexes, and agricultural land. Type 3 non-residential consists of excess acreage and commercial property. Respondent contends that the subject property contains two 18-hole golf courses, two single-family residential homes, various other structures to support the golf course, two clubhouses, and a historic residence.<sup>2</sup> *Garrison testimony; Resp't Exs. A, BB, K & U.*

27. Respondent contends that Ind. Code §6-1.1-4-42(a) defines the term "golf course" as an area of land and improvements that consists of a "series of holes, each consisting of a teeing area, fairway, rough and other hazards, and a green with a pin and cup." The DLGF procedural rules also reference the above named statute in 50 IAC 29-2-3. *Garrison testimony; Cusimano argument.*
28. Respondent contends that the DLGF has issued memoranda interpreting the definition of a golf course, but no significant change has been made to the original definition found in the statute. Respondent contends that he has followed the guidelines set forth by the DLGF whenever possible, but that he is under no obligation to follow those guidelines when they directly conflict with the plain meaning of the statute. *Garrison testimony; Cusimano argument; Resp't Ex. J & V.*
29. To arrive at an assessed value for 2015, Respondent used Walnut Creek's 2014 profit and loss statement to develop an income approach for the golf courses. The gross income was \$503,132. He then subtracted golf cart income, pro shop income, and club rental to arrive at an adjusted gross income of \$346,774. Then in accordance with 50 IAC 29-3-7, Respondent took 5% of the negative gross income to arrive at \$17,339. Next, he applied the DLGF calculated capitalization rate of 11.74%, which resulted in an indicated value of \$148,000 for the golf courses in 2015. *Garrison testimony; Resp't Exs. B-G.*

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<sup>2</sup> The historic residence is sometimes referred to as the "Halfway House."

30. Respondent contends that two of the residential homes located on the property were assessed like any other residential property. Respondent analyzed each home using the cost approach outlined in the Guidelines and comparable sales in the neighborhood. Based on this analysis, the home values total \$106,700. A third residence on the property was calculated using an income approach applying a gross rent multiplier for an indicated value of \$59,300. *Garrison testimony; Resp't Ex. B.*
31. Respondent developed an income approach for the clubhouses based on the two retail leases and one office lease listings in Marion. In that approach, he used \$0.55 per square foot and actual square footage of 3,840 square feet and 2,048 square feet. Based on the market, he subtracted vacancy and collection loss of 15% and expenses of 20% and arrived at a net operating income of \$20,367 for Walnut Creek Clubhouse and \$10,862 for Club Run Clubhouse. He used Realty Rates.com to calculate the loaded capitalization rate of 10.71%. The values based on the income approach are \$190,000 for Walnut Creek Clubhouse and \$101,000 for Club Run Clubhouse. *Garrison testimony; Resp't Exs. H & I.*
32. Respondent summarized his values as follows: golf courses \$148,000, residential homes \$106,700, residential rental property \$59,300, Walnut Creek Clubhouse \$190,000, and Club Run Clubhouse \$101,000, for a 2015 property value \$605,000. *Garrison testimony; Resp't Exs. A & B.*
33. For 2016, Respondent used the 2015 profit and loss statement. The income approach calculation used was the same as outlined for 2015. The gross income was \$476,785. After the subtraction of non-golf course expenses, the adjusted gross income was \$321,274. The same 5% set forth in 50 IAC 29-3-7 was applied to arrive at a value of \$16,064. The DLGF calculated capitalization rate of 11.66% was then applied, which resulted in a value of \$138,000 for the golf courses in 2016. *Garrison testimony; Resp't Exs. L-Q.*

34. Again, the residential homes were valued by using a trended cost approach and comparable sales in the area. Based on this analysis, the home values are \$116,600. The third residence was valued using an income approach using a gross rent multiplier for a value of \$59,300. *Garrison testimony; Resp't Ex. L.*
35. The clubhouses were calculated using the income approach as outlined above. Respondent used \$0.55 per square foot and actual square footage of 3,840 square feet and 2,048 square feet. Again, a vacancy and collection loss of 15% and expenses of 20% were used to arrive at a net operating income of \$20,367 for Walnut Creek Clubhouse and \$10,862 for Club Run Clubhouse. Using Realty Rates.com, Respondent calculated a loaded capitalization rate of 10.60%. The values based on the income approach are \$192,000 for Walnut Creek Clubhouse and \$102,000 for Club Run Clubhouse. *Garrison testimony; Resp't Ex. R & S.*
36. Respondent summarized his values as follows: golf course \$138,000, residential homes \$116,600, residential rental property \$59,300, Walnut Creek Clubhouse \$192,000, and Club Run Clubhouse \$102,000, for a 2016 property value of \$607,900. *Garrison testimony; Resp't Ex. K & L.*
37. For illustration purposes only, Respondent showed cart fees charged at two golf courses located in Grant County. Respondent claims cart fees range from \$8.00 to \$20.00 for a variety of reasons such as membership status, applicable holiday, or day of the week. Respondent argues that by charging more in cart fees, it takes away from the gross income of the golf course, thereby potentially decreasing the calculated final value of the golf course. In turn, he contends, such could result in an inequity in the assessment of golf courses in Indiana. *Garrison testimony; Cusimano argument; Resp't Exs. AA & T.*
38. Mr. Cusimano notes that the Board issued a final determination on the same issue on the subject property for 2012 on September 27, 2014. The Board's 2012 decision cited *Albert Hall, Ltd v. Huntington County Assessor*, Pet. No. 35-004-10-1-4-00007, *et. seq.*, (Ind. Bd. Tax Rev., February 3, 2012), whereby the Board relied on the plain language of

Ind. Code § 6-1.1-4-42 in determining what improvements are included and what improvements are excluded from a golf course assessment. The decision also states that the legislature is specific in what is to be included in the assessment of a golf course in the statute. Cusimano argues that because the 2015 and 2016 appeals encompass the same argument as 2012, the Board should adopt its previous ruling and deny Petitioner's appeals in this case. *Cusimano argument*.

### DISCUSSION

39. Real property is assessed for its “true tax value,” which is “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” Ind. Code § 6-1.1-31-6 (c); 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Three standard approaches are used to determine market value-in-use; the cost, sales-comparison, and income approaches. 2011 MANUAL at 2. Generally, any evidence relevant to a property's true tax value as of the assessment date, including an appraisal prepared in accordance with generally recognized appraisal principles, may be offered in an assessment appeal. *Id.* at 3.
40. However, there are exceptions to the rule. The Legislature has directed the DLGF to promulgate rules utilizing an income approach for determining the true tax value of a golf course. Ind. Code § 6-1.1-4-42(c). The parties disagree as to whether the statute applies to all real property and improvements associated with the golf course or just the real property and improvements constituting the course itself. Thus, the parties frame the issue before the Board as a question of the scope of the term “golf course.” The statute defines a golf course as “an area of land and yard improvements that are predominately used to play the game of golf. A golf course consists of the teeing area, fairway, rough and other hazards, and the green with the pin and the cup.” Ind. Code §6-1.1-4-42(b). Ind. Code § 6-1.1-4-42(b).

41. In promulgating rules on assessing golf courses, the DLGF did not elaborate on the definition of a golf course. Rather, 50 IAC 29-2-3 merely states that the term “golf course” has the meaning set forth in I.C. 6-1.1-4-42(b).
42. As noted by Petitioner, the DLGF has, however, issued two memoranda on March 2, 2015, and January 4, 2016, that address the assessment of golf courses under Ind. Code § 6-1.1-4-42. Both memoranda have two clauses that arguably interpret the definition of a golf course:

Most golf courses feature multiple tracts of land, a club house, maintenance building, housing for irrigation pumps and/or controls, and a driving range. The aggregate income capitalization valuation of these parcels contributes to the NOI of the course and generally cannot be separated out. The market value-in-use of the facility would therefore include all of the parcels.

Finally, the income capitalization method for golf courses includes revenue from multiple sources, including greens fees, membership fees, food and beverage sales, the driving range, etc. Consequently, the clubhouse, banquet center, driving range, maintenance building, housing for pumps and/or controls, etc., are not to be assessed separately and are included in the assessment for the golf course using the income capitalization method.

*Respondent Ex. J & V.* The Board notes that the memoranda reflect an evolution of thought on certain aspects of the statute, which may still be in flux. Had the DLGF interpreted the definition of “golf course” through the rule-making process, the DLGF would be entitled to due deference in regard to the interpretation of the statute. But the DLGF has not done so. Therefore, the Board looks to the text of the statute.

43. The Board previously addressed the statute in *Albert Hall Ltd. v. Huntington Co. Assessor*, Pet. No. 35-004-10-1-4-00007, *et. seq.*, Ind. Bd. Tax Rev., February 3, 2012. Relying on the plain language of the statute, the Board noted that the land and improvements consisting of a club house and lodge cannot properly be described as “a teeing area, fairway, rough and other hazards, or the green.” *Id.* at 6. The Board concluded that the “property must be divided into two portions for purposes of measuring its true tax value.” *Id.* at 7. The true tax value of the portion “used as a golf course is the

amount yielded by applying the income capitalization approach,” and the true tax value of the remaining portion is “the property’s market value-in-use.” *Albert Hall* was decided by the Board before the promulgation of 50 IAC 29 (August 30, 2012).

44. The Board finds direction in a review of the prior regimen for assessing golf courses. Under the 2002 Guidelines,<sup>3</sup> land used for golf courses was classified as commercial property—Class 4, which is “commercial taxable land and improvements used for general commercial and recreational purpose.” Guidelines Ch. 2 at 31 (Table 2-1). Golf courses received further designation under subclass 4-63 “golf course or country club.” *Id.* at 32 (Table 2-2).
45. The golf course improvements, as separate from the land, were assessed under Chapter 7 Commercial and Industrial Yard Structures. Guidelines Ch. 7 at 2. “The valuation of commercial and industrial yard structures” was recorded in the “Summary of Improvements” section of the property record card. *Id.* at 3. Yard improvements were assessed on a per-hole base rate. *Id.* at 20. The true tax value was determined by assigning grades and values in conformity with cost schedules. *See generally* Guidelines Ch. 7.
46. Under Appendix G, Schedule G, entitled “Yard Improvements” and subtitled “Golf Courses,” the cost schedule includes both base costs per hole and component costs per course. Guidelines Appendix G at 37. Base costs include architectural fees, normal site preparation (grading, fairway seeding, and landscaping), sprinkler installation (water source, pumps, piping, and heads), roadway construction (base preparation, paving and bridging, service roads and cart paths), green construction, tee construction, and bunker construction. *Id.* Cost components include tees, bunkers, greens, lakes, sprinkler systems, site preparation, and landscaping. *Id.*

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<sup>3</sup> The 2002 Guidelines were in effect at the time of passage of the statute. The 2011 Guidelines, currently in effect, have the same provisions referenced.

47. “In construing statutes, words and phrases will be taken in their plain or ordinary and usual sense unless a different purpose is clearly manifest by the statute itself, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.” *Indiana Dep’t of State Revenue v. Colpaert Realty Corp.*, 109 N.E.2d 415, 418-419 (Ind. 1952).
48. The statute clearly defines a golf course as “land” and “yard improvements.” “Yard improvements” is a term of art in the context of assessing.<sup>4</sup> Under the cost approach, golf course yard improvements encompassed the costs of constructing the playing area, hazards, lakes, and sprinkler system. The Board presumes the Legislature chose the terms “land” and “yard improvements” with a knowledge of how golf courses were assessed under the Guidelines.<sup>5</sup> To remove any doubt, the legislature specified that “[a] golf course consists of the teeing area, fairway, rough and other hazards, and the green with the pin and cup.” This definition is consistent with the items contained in the cost schedule for golf course yard improvements.
49. The Board finds that the legislature clearly intended the statute to replace the provisions in the 2002 Guidelines relating to the valuation of golf course land and yard improvements. Furthermore, the statute is expressly limited to the land that consists of the playing areas of a golf course. Similarly, the selection of the term “yard improvements,” rather than simply “improvements,” indicates that the Legislature intended its application would be limited to the types of improvements considered yard improvements under the 2002 Guidelines. It is no coincidence that the base and

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<sup>4</sup> The nature of a “yard improvement” differs depending on the land classification. Residential yard improvements include structures such as a detached garage, but not a dwelling. Guidelines Ch. 5 Appendix C Schedule G.1. Agricultural yard improvements include all structures such as barns and silos. Guideline Ch. 5 Appendix C Schedule G.1. Commercial properties include various structures including towers, tanks, and grain elevators. Guidelines Ch. 6 Appendix G Schedule G. Yard improvements for utilities do not include buildings or structures. Guidelines Ch. 9.

<sup>5</sup> This understanding of yard improvements is also consistent with other outdoor commercial and recreational facilities: projection booths are excluded from drive-in theater yard improvements, building structures, parking, and fencing are excluded from miniature golf yard improvements, and building structures, parking, and fencing are excluded from golf driving range yard improvements.

component items contemplated in the “Yard Improvement” schedule are limited to those found in the playing areas of a golf course.

50. The Board finds the Legislature took pains to specifically describe the playing area of a golf course and intentionally excluded from the definition clubhouses and similar improvements. Additionally, the statute requires that the DLGF rules “provide for the uniform and equal assessment of golf courses of similar grade quality and play length,” reflecting a focus on the playing area rather than ancillary amenities. Thus, the Board concludes that according to Ind. Code § 6-1.1-4-42 “golf course” consists only of the golf course playing area. The land and improvements that are ancillary to the playing area of a golf course are not entitled to an assessment under the statute’s modified income approach.
51. This interpretation is consistent with another assessment provision requiring an income approach in determining the true tax value of agricultural property. Under Ind. Code § 6-1.1-4-13(d), the DLGF is directed to “provide for the method for determining the true tax value of *each parcel of agricultural land.*” (Emphasis added). The term “agricultural land” is not specifically defined. The reference to “parcel” might be interpreted to include all real property, including improvements on the parcel, but it applies only to the land. Agricultural improvements are assessed separately and by any generally accepted appraisal approach. *See Grabbe v. Duff*, 1 N.E.3d 226, 227-28 (Ind. Tax Ct. 2013). The Legislature’s omission of the term “yard improvements” in the agricultural assessment statute and inclusion in the golf course assessment statute supports the Board’s conclusion that significance should be attached to that term.
52. Similarly, Ind. Code § 6-1.1-4-39, describes the process for determining the “true tax value of *real property* regularly used to rent or otherwise furnish residential accommodations.” (Emphasis added). This statute does not contain a more specific definition. The Board finds the Legislature would have simply used the term “real

property,” without a specific definition of a golf course, had the Legislature intended that the provision would cover all property regularly used as a golf course.

53. Separating the income associated with the playing area of a golf course from the clubhouse is entirely consistent with the established assessing practice of applying an income approach to farmland and separately assessing the barns and silos. Whether a golf course can be sold without the clubhouse has no more relevance to determining the true tax value than whether a ranch can be sold without the stables.
54. The parties are in the position where the rule-making agency and adjudicatory agency have taken conflicting interpretations of the statute. Ultimately, however, the dispute between “land and yard improvements” and golf course enterprise is not reached in this case.
55. In determining the predominate use of property, “the relevant inquiry is the use of the property at issue rather than the nature of the taxpayer’s business.” *Carnahan Grain, Inc. v. Ind. Dep’t of State Revenue*, 828 N.E.2d 465, 469 n. 6 (Ind. Tax Ct. 2005). “Intent does not establish predominate use.” *6787 Steelworkers Hall, Inc. v. Scott*, 933 N.E.2d 591, 596 (Ind. Tax Ct. 2010).
56. There is very little testimony regarding the uses of the residences. The Board finds the Petitioners have failed to prove that the residences are used to play the game of golf. One is a residence where Petitioners and their family have lived for approximately 40 years. Similarly, the “Halfway House” has no evident use related to the game of golf. Additionally, the Board is not persuaded that the home built originally for Ballinger’s mother is necessary to prevent cars from driving on the golf course. The record is somewhat unclear regarding the use of that home.
57. The Board concludes that the land and improvements consisting of the residences are not entitled to an assessment through the modified income approach.

58. The Board now turns to the evidence presented by Respondent regarding the value of the residences. “The overarching goal of Indiana’s new assessment scheme is to measure a property’s value using objectively verifiable data.” *Westfield Golf Practice Ctr., LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) citing *Eckerling v. Wayne Twp. Assessor*, 841 N.E. 2d 674, 677-78 (Ind. Tax Ct. 2006) (explaining that one cannot rebut the presumption that an assessment is correct without presenting evidence of the property’s market value-in-use). As such, a party must focus not on the methodology used to determine its assessment, but rather its actual market value-in-use. Respondent estimated the homes values based on a trended cost approach and a sales comparison analysis. But he did not present any objectively verifiable data to support his calculation. Consequently, the analysis does not suffice to make a prima facie case for the subject property’s market value-in-use according to generally accepted appraisal practices. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that taxpayers were responsible for their property’s characteristics, how those characteristics compared to those of their purportedly comparable properties, and how any differences affected the properties’ market values-in-use). Respondent has failed to make a prima facie case as to the correct value of the residences for both years under appeal.
59. Respondent’s income capitalization approach fails to comply with generally accepted appraisal principles for several reasons. First, Respondent attempted to develop a market rent from two retail leases and one office lease, but the determination of the rent rate is unreliable. Because Respondent failed to make any adjustments for location, size, or any other factor, it is unclear how those rent rates are relevant to the subject property.
60. Similarly, Respondent failed to explain his vacancy and collection loss, expenses, and capitalization rate. See *Grabbe v. Carroll County Assessor*, 1 N.E.3d 226, 231 (Ind. Tax Ct. 2013) (upholding determination that income approach lacked probative value where taxpayer failed to provide evidence demonstrating why 20% capitalization rate was proper).

61. The burden rests on Petitioners to prove their requested values of \$142,400 for 2015 and \$145,900 for 2016. As previously discussed, the residences are not predominately used to play the game of golf and are not entitled to an assessment under the modified income approach. Because Petitioners failed to present any evidence as to the market value-in-use of the residences, the Board cannot find that Petitioners are entitled to the 2015 and 2016 requested values.

#### **SUMMARY OF FINAL DETERMINATION**

62. Neither Petitioners nor Respondent have made a prima facie case as to the correct assessed values for 2015 and 2016. Therefore, the Board orders no change for those years.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.